

FILED 7/17/2015 (Date)

BEFORE THE IOWA ENGINEERING AND LAND SURVEYING  
EXAMINING BOARD

Board / Commission

Signature, Executive Officer

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<b>Petition by Craig R. Johnstone for</b>	)	
<b>Declaratory Order on Iowa Code</b>	)	<b>Order Declining to Issue</b>
<b>Section 355.11(1)</b>	)	<b>Declaratory Order</b>

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Petitioner Craig R. Johnstone, PLS, PE, filed a Petition for Declaratory Order with the Iowa Engineering and Land Surveying Examining Board ("Board") dated February 19, 2015. Petitioner granted the Board an extension of time to gather input from affected land surveyors. The Board set the Petition for consideration at its meeting on July 9, 2015. After reviewing the Petition and written comments, and considering the oral presentations, the Board issues the following Order:

1. Petitioner is a longstanding professional land surveyor and professional engineer, a former member of the Board, and a former peer reviewer for the Board.
2. Petitioner asks the Board to answer two questions:
  - (1) Does a Land Surveyor have the choice to not monument any United States Public Land Corners shown on their plat?
  - (2) Does showing the corner position of a United States Public Land Corner by Bearing and Distance on a plat constitute use?
3. Petitioner urges the Board to answer the first question in the negative and the second question in the affirmative. He cites in support Iowa Code sections 355.4, 355.6(1), 355.7(8), and 355.11.
4. The Petitioner is concerned that some Iowa land surveyors have shown calculated corner positions for United States Public Land System corners on plats of survey without locating or placing monuments or filing corner certificates. He attached an example plat of survey to his Petition. It is Petitioner's contention that any plat of survey showing calculated bearings and distances to a corner position poses a nondiscretionary duty on the land surveyor to assure proper monumentation of the corner with an associated corner certificate.
5. As a practical matter, Petitioner contends that if a corner shown on a plat of survey is not monumented, a retracing future surveyor will not be able to check the survey for accuracy or to discover measurement errors.
6. As a legal matter, Petitioner argues that Iowa Code section 355.4 requires a surveyor conducting field work to locate and connect all "monuments necessary for location of the parcel or tract." He notes that Iowa Code section 355.6(1) requires

control monuments "at each controlling corner on the boundaries of the parcel or tract of land being surveyed," and Iowa Code section 355.7(8) requires a description of monumentation for all United States Public Land Survey System corners which "control the land description." Finally, Petitioner cites Iowa Code section 355.11(1) as requiring a corner certificate for all corners of a quarter-quarter section or larger aliquot part of a section when a survey "includes the use" of such a corner.

7. The Board requested input from those land surveyors on the Board's roster of peer reviewers on whom the Board relies in assessing whether a surveyor has satisfied minimum land surveying standards in disciplinary investigations. The Board also requested input from the Society of Land Surveyors of Iowa.

8. The prevailing reaction of this community of practitioners was that the Petitioner's interpretation of relevant laws is overreaching, unnecessary, and contrary to the public's interest. In a summary way, many practitioners observed that mandating monumentation for all corners shown as calculated on a plat of survey goes beyond the standards required by law because some corners which may be calculated on a plat are not on the boundaries of the land being surveyed or otherwise "used" in determining the location of the parcel or tract. Surveyors noted that the calculated corner could be referenced by a subsequent surveyor and that there were multiple practical obstacles and implications to monumenting distant corners on the properties of other land owners.

9. The gist of the dispute is the degree to which the wording of the law imposes nondiscretionary monumentation requirements or accommodates the professional judgment of a surveyor when assessing the unique circumstances presented by the field work necessary to determine and document the boundaries of the parcel or tract being surveyed.

10. Whether a responding surveyor agreed or disagreed with all or part of the Petitioner's contentions, the general consensus was that this debate spans 25 years, has been a point of dispute among surveyors for a very long time, and involves more nuances than the Petition suggests. The Board surmises that there are facts upon which all or most of the responding surveyors would completely agree with Petitioner, but other facts which may accommodate showing a calculated corner on a plat of survey without triggering a statutory mandate that the surveyor locate or set a monument with associated corner certificate.

11. By way of example, one responding surveyor noted that the "logical termini" must be monumented so that the center of a section would require a monument if the parcel to be surveyed was the northeast quarter of the northeast quarter of a section. The surveyor questioned the wisdom, however, of mandating monuments at all five quarter-quarter section corners when surveying the northwest quarter of the northwest quarter of the northwest quarter of a section.

12. Another responding surveyor noted that surveyors conducting field work may identify corners that are essential to matching the survey on the ground and other corners that are helpful to clarify a survey drawing but are not essential to field operations. Mandating that all calculated corner positions shown on a plat of survey be

monumented would, in that surveyor's view, go beyond what minimum statutory standards require.

13. The unanimous board of directors of the Society of Land Surveyors of Iowa urges the Board to deny the Petition on several grounds. Board member Howard Stewart is on the Society's board of directors, but he abstained from the Society's vote given the pending Petition for Declaratory Order before this Board. First, the Society interprets Iowa Code section 355.6(2)(a) as only mandating control monuments at each corner or angle point of the lot, block, or parcel of the land surveyed. Second, the Society is of the opinion that the survey attached to the Petition fully complies with Iowa Code section 355.7(8) by clearly identifying all United States Public Land Survey System corners that control the land description, including a description of monumentation. Third, the Society concluded corner certificates were not required for calculated corners that were not set and are not on the boundary of the parcel or tract of land the surveyor was retained to survey. Fourth, the Society cites Iowa Code section 354.4(4) as providing an example where monumentation of a quarter-quarter corner is not required. Fifth, the Society asserts that even if showing a calculated corner on a plat of survey constitutes "use," a surveyor has discretion whether to monument that corner if the corner is not on the boundary of the parcel surveyed. Finally, the Society points out that the choices made in the survey attached to the Petition are consistent with the prevailing standards employed by Iowa land surveyor peers and that mandating a different standard by declaratory order would not protect the public, would dramatically alter surveying standards and practices, and would require the placement of far more monuments on Iowa land owners' property than tolerance levels would support without adding sufficient surveying certainty to justify such widespread disruption.

14. One responding surveyor who is generally supportive of the answers urged by the Petitioner agrees the Board should clarify these issues, but raises concerns that using a declaratory order process to resolve the 25-year old debate is unwise. The surveyor encourages the Board to instead consider using the administrative rules process to assure broader public input and the opportunity for the legislature to weigh in on the proper interpretation of statutory land surveying standards.

15. The Board deeply appreciates the passion and engagement of the Petitioner and all the surveyors who offered opinions and observations on these important issues. The Board believes the contours of the mandatory requirements should be certain to the extent feasible and should facilitate the fundamental role of professional land surveyors while assuring the standards do not mandate actions that may have unintended adverse consequences without a corresponding benefit to the public. As a practical matter, it is unacceptable for some surveyors to believe it is their duty to locate or set monuments under conditions where other surveyors believe it is beyond their duty to do so. While standards must be complied with regardless of cost, it is unfair for some land owners to pay far more than others based solely on surveyors' practice variations in monumentation requirements on distant property.

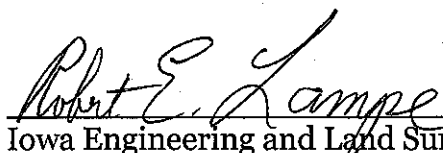
16. The Board concludes the declaratory order process is not suitable to resolve these issues. While grateful for the input provided to the Board, the Board has no assurance that all potentially affected practitioners and other stakeholders have had

an adequate opportunity to share views and participate. Additionally, in the event the Board concludes prevailing practices may be inconsistent with one or more provisions of the law or that the law is ambiguous in a manner difficult to resolve without amending the law, it would be important to invite legislative oversight of the nature provided by the administrative rules process. The administrative rules process affords an opportunity for public comment and allows broad participation and oversight by the Governor, the Attorney General, the Administrative Rules Review Committee, and possibly the entire legislature.

17. The Board has already established a process for reviewing rules in its rolling 5-year review of all of its administrative rules. The Board's review includes land surveying standards. The Board invites any interested person to suggest rule amendments for consideration on the topics covered by the Petition or otherwise related to land surveying standards.

18. The Board accordingly voted unanimously on July 9, 2015 to decline to issue a declaratory order pursuant to 193 Iowa Administrative Code 10.9(5). This order memorializes the basis for the Board's prior vote.

**IT IS SO ORDERED this 17 day of July, 2015.**

A handwritten signature in cursive script, reading "Robert E. Lampe", is written over a horizontal line.

Iowa Engineering and Land Surveying Examining Board  
By: Robert Lampe, Executive Officer

Issued on the 17 day of July, 2015.